

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY REALA,

VERIFIED ANSWER

Plaintiff,

Docket No. 08 CIV 7685

-against-

CHICK-FIL-A, INC.,

Defendant.

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Defendant, CHICK-FIL-A, INC., through its attorneys, RENDE, RYAN & DOWNES, LLP, answering the Complaint of the plaintiff herein upon information and belief:

AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF

1. Denies each and every allegation contained in the paragraphs designated "1," "12," "13," and "14" thereof.
2. Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs designated "3," "4," "5," "6," "7," "8," "9," "10" and "11" thereof.

AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF

3. Defendant repeats, reiterates and realleges each and every denial to the allegations contained in the paragraphs designated "1" through "14" insofar as said allegations are repeated, reiterated and realleged in paragraph "15."
4. Denies each and every allegation contained in the paragraph designated "16" and refers all questions of law to the Court.
5. Denies each and every allegation contained in the paragraph designated "17" thereof.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. That the occurrence complained of was caused in whole or in part by the culpable conduct attributable to the plaintiff including contributory negligence and/or assumption of the risk and that by reason thereof the amount of damages recoverable, if any, shall be diminished in whole or in part by that portion to which the culpable conduct attributable to the plaintiff bears to the alleged conduct of the defendant which allegedly caused the damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. In the event plaintiff recovers a verdict or judgment against the defendant, then such verdict or judgment must be reduced pursuant to CPLR 4545(c) by those amounts which have been or will, with reasonable certainty, replace or indemnify plaintiff, in whole or in part, for any past or future claimed economic loss, from any collateral source.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

8. The equitable share of the liability of the answering defendant, if any, is less than or equal to fifty percent of the total liability of all persons liable, and as such the answering defendant's liability for non-economic loss is limited to its equitable share.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

9. If the plaintiff was caused to sustain personal injuries and resulting damages at the time and place set forth in the plaintiff's complaint and in the manner alleged therein through any carelessness, recklessness, acts, omissions, negligence and/or breaches of duty and/or warranty and/or contract other than of the plaintiff, then the said injuries and damages arose out of the several and joint carelessness, recklessness, acts, omissions, negligence and breaches of duty and/or obligation and/or statute, and/or warranty, and/or contract in fact or implied in law, upon the part of non-parties subject to in-personam jurisdiction, and if this pleading defendant is found negligent as to the plaintiff for the injuries and damages set forth in the plaintiff's compliant,

then and in that event, the relative responsibilities of said pleading defendant must be apportioned by the percentage liability of said non-parties subject to in-personam jurisdiction.

WHEREFORE, defendant, CHICK-FIL-A, INC., demands judgment against the plaintiff dismissing the amended complaint, together with the costs and disbursements of this action.

DATED: September 3, 2008
White Plains, New York

Yours, etc.,

RENDE, RYAN & DOWNES, LLP.

By: /S
CHRISTOPHER J. WHITTON (CW8380)
Attorneys for Defendant
CHICK-FIL-A, INC.
202 Mamaroneck Avenue
White Plains, New York 10601
(914) 681-0444

TO: Victor J. Horowitz
Attorney for Plaintiff
305 Broadway
New York, New York 10007
212-227-1500

STATE OF NEW YORK
COUNTY OF WESTCHESTER

CHRISTOPHER J. WHITTON deposes and says:

I am a member of the firm of RENDE, RYAN & DOWNES, LLP, the attorneys for the defendant, CHICK-FIL-A, INC., in the above-entitled action.

I have read the foregoing Verified Answer and know the contents thereof; it is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief; and as to those matters I believe them to be true. The sources of my information and the grounds of my belief are file materials examined by me relative to the issues referred to in the Verified Answer.

The reason this verification is made by me instead of by the defendant, CHICK-FIL-A, INC., is that I am in possession of the material information on which this action is based.

I affirm that the above is true under the penalties of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules.

Dated: September 3, 2008
White Plains, New York

/S
CHRISTOPHER J. WHITTON

CERTIFICATE OF SERVICE

This is to certify that on September 3, 2008, a copy of the foregoing **VERIFIED ANSWER** was served on the following counsel of record via regular mail:

Victor J. Horowitz
Attorney for Plaintiff
305 Broadway
New York, New York 10007
212-227-1500

/S

CHRISTOPHER J. WHITTON (CW8380)
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